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March 24, 2020

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: WC Docket No. 11-42

Dear Ms. Dortch:

On behalf of Smith Bagley, Inc. ("SBI"), we write to request urgent action to ensure low-income populations, including those on Tribal lands, have continued connectivity and sufficient broadband capacity to meet critical needs during the COVID-19 pandemic emergency.

The rapid spread of the COVID-19 virus across the United States poses enormous challenges that have required swift and far-reaching measures at nearly every level of society. SBI commends the Commission for taking prompt action in the face of this crisis, including its adoption of the Keep Americans Connected Pledge¹ and the recent Order temporarily waiving certain Lifeline rules.²

In response to the crisis, SBI has signed the Keep Americans Connected Pledge. In addition, it has created temporary rate plans to assist subscribers experiencing hardship due to the pandemic, in an attempt to assure they do not lose connectivity. These plans include, (i) 2 GB of free data on MiFi devices, (ii) unlimited talk and text, or increases in data for customers on prepaid rate plans, and (iii) an additional 2 GB of free data for Lifeline customers exceeding their data caps. These steps are not enough.

¹ See "Chairman Pai Launches the Keep Americans Connected Pledge," News Release (rel. March 13, 2020); "205 More Broadband and Telephone Service Providers Take the Keep Americans Connected Pledge," News Release (rel. March 19, 2020).

² *Lifeline and Link Up Reform and Modernization*, Order, DA 20-285, WC Docket No. 11-42 (rel. March 17, 2020).

At this time additional relief is needed given the worsening situation and the special challenges faced by low-income populations, especially on Tribal lands. SBI requests the Commission to take the following steps, at a minimum on Tribal lands, and consider taking these steps throughout the nation:

- Make additional support available on a temporary basis for purchase of broadband-capable devices and for additional data needed to access distance learning and other critical services;
- Temporarily suspend the rule requiring notification and de-enrollment for non-usage of no-charge Lifeline service; and
- Temporarily suspend the one-per-household requirement.

I. Additional Support Should Be Provided for Devices and Data

The COVID-19 pandemic has prompted responses by state, county and Tribal governments that have created a vast new need for broadband connectivity. In Arizona and New Mexico, all schools have been ordered closed, a situation that could last for several months.³ In addition, the Navajo Nation has issued an emergency declaration closing parks, recreation sites, and casinos.⁴ The Navajo Nation has been closed to visitors, which will have severe impacts on the tourist industry that is a vital part of the Tribal economy.⁵ Other Tribal governments in the region, including Hopi and White Mountain Apache, have also issued emergency declarations, with lists of closures.⁶

³ Nicole Garcia, "Parents Grapple with the Prospect of a 20-Week Closure as Arizona Schools Close Statewide," FOX 10 PHOENIX (March 17, 2020), accessed at <https://www.fox10phoenix.com/news/parents-grapple-with-the-possibility-of-a-20-week-closure-as-arizona-schools-close-statewide>; Morgan Lee and Susan Montoya Bryan, "Families Prepare for Extended School Closures in New Mexico," US NEWS & WORLD REPORT (March 13, 2020), accessed at <https://www.usnews.com/news/best-states/new-mexico/articles/2020-03-13/families-prepare-for-extended-school-closures-in-new-mexico>.

⁴ Arlyssa Becenti, "3 Cases of Coronavirus Confirmed: Officials Increase Efforts to Fight Spread of Illness," NAVAJO TIMES (March 19, 2020), accessed at <https://navajotimes.com/reznews/2-cases-of-coronavirus-confirmed-officials-increase-efforts-to-fight-spread-of-illness/>.

⁵ Shondlin Silversmith, "Navajo Nation Closes to Visitors in Response to Coronavirus," AZ CENTRAL (March 18, 2020), accessed at <https://www.azcentral.com/story/news/local/arizona/2020/03/18/navajo-nation-closes-visitors-response-coronavirus/2865324001/>.

⁶ Debra Utacia Krol and Shondlin Silversmith, "Coronavirus in Arizona: Several Tribes Declare a State of Emergency, Many Shut Down Gaming," ARIZONA REPUBLIC (March 15, 2020), accessed at

SBI is already seeing demand for data on its network serving Tribal lands increasing dramatically, as citizens forced to remain at home must use telephone and broadband devices to communicate and perform whatever tasks they can during this crisis. Students need both devices and data to successfully engage in distance learning.

At the very time that demand is expanding, SBI has been forced to close all of its storefronts and is making best efforts to maintain services to its customers. Store closures cause tremendous hardship to Tribal citizens, as fully 50% of the funds SBI collects each month from stores are made in cash payments from “unbanked” customers who cannot mail SBI a check or provide a credit card payment. These customers cannot pay bills, purchase devices, additional data, or accessories, cutting off significant revenue needed to maintain service. This loss of revenue limits what SBI can do to assist its customers in the form of providing free devices and additional data.

For example, multiple schools have asked SBI to provide free wireless hotspot data devices and services. SBI has some devices on hand, but has ordered 2000 additional devices at a cost of approximately \$140,000. These demands for free devices and additional data come just as many of SBI’s retail customers are unable to pay bills on time, when unemployment is increasing dramatically, and when SBI’s Tribal Lifeline customers are facing various regulatory deadlines to retain connectivity. SBI’s low-income consumers need emergency action to help them get and stay connected, similar to the Commission’s response to Hurricane Katrina.⁷

SBI proposes a twofold solution, similar to the *Hurricane Katrina Order*. First, the Commission should provide a one-time subsidy of up to \$150 per device to cover the cost of providing broadband-capable devices, including tablets, smartphones, and MiFi routers. Second, the Commission should provide an additional monthly Lifeline reimbursement of \$20 to carriers delivering an additional 10 GB of unthrottled data for mobile broadband customers.

Currently, SBI offers Tribal Lifeline customers mobile wireless service that includes unlimited voice and 5 GB of data per month. In a typical pre-crisis month, approximately one-fourth of those customers exceed their data limit; given the increased need for data in the current environment, SBI expects that proportion to rise significantly. By adding 10 GB of data,

<https://www.azcentral.com/story/news/local/arizona/2020/03/15/arizona-tribes-respond-covid-19-emergency-declarations-and-testing/5055702002/>.

⁷ *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, Order, 20 FCC Rcd 16883 (2005) (“*Hurricane Katrina Order*”) (The Commission provided up to \$130 of support per household to cover the purchase of a wireless handset and a package of at least 300 minutes per month.)

fewer customers will exceed their data limit, which is critical at this time since unbanked customers purchase additional data by visiting stores that are now closed.

These measures would enhance the ability of low-income consumers to access educational, medical, and other essential services in the current pandemic situation. Consumers in SBI's service area will be more likely than ever to use their entire data allotment because of the unprecedented need for remote access in virtually every area of life. Because of the ongoing pandemic, customers must now rely on home broadband access, as it is no longer possible or advisable to go to libraries, chapter houses, or other community locations to access public Wi-Fi.⁸ Based on current trends, SBI believes the increased demand for data in its service area would consume as much as SBI can provide.

SBI requests that this additional support be made available until the Commission determines there is no longer an emergency need for Lifeline-eligible consumers to access educational and other critical services remotely.

II. SBI Requests Temporary Suspension of the Lifeline Non-Usage Rules

Under the non-usage rules, if a customer on a no-charge plan goes for 30 consecutive days without using the service, the ETC must notify the customer that they will be de-enrolled if they do not use their service within another 15 days.⁹ The non-usage rule was intended to prevent reimbursement in cases where "a wireless phone has been lost, is no longer working, or the subscriber has abandoned or improperly transferred the account."¹⁰

Each month, SBI de-enrolls several hundred customers subscribing to no-charge plans for non-usage. However, a substantial portion of those customers rely on their service and desire to keep it.¹¹ Of the several hundred customers that SBI de-enrolls each month, approximately 100-150 return to stores to re-enroll within 30 days. With SBI's stores now

⁸ Dr. Nicol Turner Lee, "What the Coronavirus Reveals About the Digital Divide Between Schools and Communities," Brookings TechTank blog post dated March 17, 2020, accessed at <https://www.brookings.edu/blog/techtank/2020/03/17/what-the-coronavirus-reveals-about-the-digital-divide-between-schools-and-communities/>.

⁹ 47 C.F.R. §§ 54.405(e)(3), 54.407(c)(2).

¹⁰ *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6771, para. 263 (2012) ("2012 Lifeline Order").

¹¹ For example, many keep their phones switched off to conserve battery power because they live in homes that lack electricity. Many are elderly and have phones for peace of mind only and do not frequently use them.

closed, virtually all customers de-enrolled for non-usage would be unable to re-enroll in the near future.

Temporarily suspending the non-usage requirement for SBI (and any similarly affected carriers) will prevent otherwise eligible low-income citizens from being disconnected from telephone and Internet access. Customers who are de-enrolled for non-usage and wish to reconnect must now reapply, facing a new burden that is in addition to the hardships they are enduring because of the COVID-19 pandemic.

Critically, nearly all SBI's Lifeline enrollments and re-enrollments occur in stores. With a large proportion of customers who are elderly or disabled, and with many non-English speakers, customers in SBI's service area typically rely on SBI representatives to complete the National Verifier application via the Service Provider Portal. This must occur in stores because applications cannot be done over the phone.¹² Again, in-store re-enrollment is unavailable during the crisis.

SBI believes that strict application of the non-usage rules will result in many eligible Lifeline customers, both Tribal and non-Tribal, losing critical services because they are unable to re-enroll during the pandemic response. Mobile communications and broadband will be especially critical in the coming weeks and months as schools adjust to distance learning, and as people stay connected remotely with elderly parents and other at-risk family members and neighbors – and receive critical updates from federal, state, local and Tribal governments.

Accordingly, SBI asks the FCC to suspend the non-usage requirement for a period of 60 days. Similar to the recent order granting 60-day waivers of the recertification and reverification rules, we ask that the Commission evaluate the need for additional relief given the status of the national COVID-19 emergency and government response.

III. The Commission Should Temporarily Waive the One-Per Household Rule

Because of the critical importance of voice and data connectivity during the pandemic crisis, SBI urges the Commission to temporarily waive the rule limiting Lifeline service to one connection per household. As discussed above, there is now a large and growing need for broadband to access services remotely. A temporary waiver of the one-per-household rule will increase access to these services at a crucial time for low-income families.

¹² See: <https://www.usac.org/lifeline/eligibility/national-verifier/how-to-use-it/> ("Consumers can visit a service provider, who will use NLAD to enter the subscriber's information, receive an eligibility decision, and enroll the subscriber. ... Service providers cannot initial or e-sign on behalf of a customer, and cannot accept applications by phone").

The one-per-household restriction will only impede the ability of low-income consumers to access critical services during the pandemic crisis. With government offices, businesses and schools closed, a typical low-income family may have one or two parents working remotely and multiple school-age children who need to access educational content online. But this access will not be available to a family that has one Lifeline-supported service and cannot afford additional connections. This problem will be alleviated if low-income consumers are given the ability to obtain Lifeline-discounted broadband service without the current one-per-household restriction.

SBI requests that the rule be suspended until the Commission determines there is no longer an emergency among Lifeline-eligible populations for remote access critical services.

This request is urgent. SBI's ability to meet the needs of its Tribal customers, as well as those living nearby, is threatened by this crisis. Should you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



David A. LaFuria
Steven M. Chernoff
Counsel for Smith Bagley, Inc.

cc: Hon. Ajit Pai
Hon. Michael O'Rielly
Hon. Brendan Carr
Hon. Jessica Rosenworcel
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